

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David N. Johnson,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1446
Parcel No. 010/00272-000-000

On May 13, 2013, the above captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Petitioner-Appellant David N. Johnson was self-represented. Ralph Marasco, Jr./David Hibbard/Anastasia Hurn are legal counsel for the Board of Review. Johnson requested a written consideration. The Appeal Board having reviewed the record and being fully advised finds:

Findings of Fact

All Star Financial, LLC owns property located at 506 Pleasant View Drive, Des Moines, Iowa. All Star Financial's managing member, David N. Johnson, appealed the Polk County Board of Review's decision reassessing the subject property. The real estate was classified residential on the January 1, 2011, assessment and valued at \$90,100, representing \$18,900 in land value and \$71,200 in dwelling value.

According to the property record card, the subject property is a one-story home built in 1920 with an effective year built of 1938. The subject property has 1078 square feet of above-grade living area including 202 square feet of attic finish. It has 576 square feet of basement with 280 square feet of low quality basement finish. The home has an 84 square-foot enclosed porch and a 230 square-foot

deck. The home also has a 336 square-foot detached garage built in 1958. The home is of average quality (4-10) grade and is in above-normal condition. The site is 0.216 acres.

Johnson protested to the Board of Review on the ground that the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2). He asserted the subject property's correct value is \$45,000. The Board of Review denied his claim.

Johnson then appealed to this Board re-asserting his over-assessment claim.

Johnson's appeal consists of a letter dated June 30, 2011, which was forwarded to this Board by the Board of Review. In this letter, Johnson outlines why he believes the property is over-assessed. First, he states the subject property was bank-owned and he purchased it for \$45,000 on March 11, 2010. Prior to his purchase, the subject property was offered for purchase at a sheriff sale and a realtor unsuccessfully listed the property for over nine months before it was finally placed on a nationwide auction site. He provided one-page of a settlement statement verifying the sale price.

A property sold as the result of a foreclosure, or a "bank-owned" property, would be considered an abnormal transaction under Iowa law and not an arm's-length sale. Additionally, in arriving at market value, sale prices of property in abnormal transactions not reflecting market value must not be taken into account, or must be adjusted to eliminate the effect of factors which distort market value under Iowa Code section 441.21(1)(b). Johnson made no adjustments to the sale price to account for the distorting effect of the foreclosure sale. Additionally, we do not believe an early 2010 sale by itself is necessarily reflective of a 2011 market value. For these reasons, we do not find the purchase price conclusively establishes the subject's fair market value.

Second, Johnson noted that after he purchased the property "he cleaned the place up" and "made some cosmetic improvements." He also tried, unsuccessfully, to sell the property in 2010, after listing it in the low \$80,000 range and currently rents the property.

Third, Johnson provided a spreadsheet of properties he considered comparable. He asserts the subject's neighborhood is "filled with homes just like these properties" and that they are selling for less than their assessed values. His spreadsheet included seven sold properties and five active listings. We note that six of these sales and listings were owned by Fannie Mae or Freddie Mac, which would indicate they were bank-owned properties. Without adjustments for this factor, and lacking adjustments for any other differences, we give this evidence no consideration.

Lastly, he provided eight properties he asserts had their assessments lowered in 2011 because of sales in the fourth quarter of 2010. In order to be successful in a market value claim, Johnson must show the correct value of his property as of January 1, 2011. Showing that other homes' assessments were reduced does not provide this evidence. While all of the properties sold between August and December 2010, Johnson did not provide any evidence about these properties and did not make adjustments for differences that may exist when compared to the subject. Finally, Johnson did not conclude an opinion of value based on these properties. For these reasons, we give this evidence no consideration.

The Board of Review considered three comparable properties that sold between April 2009 and September 2010; and they had sales prices ranging from \$78,000 to \$112,500. After adjustments, the indicated value ranged from roughly \$80,000 to \$96,000; which they assert supports the January 1, 2011, assessment. The Board of Review analysis does not include any explanation of the sales and while adjustments to the properties were made, they appear to be cost-based in nature. For example, Comparable 2 has an enclosed porch that is 28 square-feet larger than the subject's enclosed porch, however an adjustment of roughly \$400 was made for this difference. We do not believe the market would recognize such a small difference in porch sizes. For this reason, we give the analysis limited consideration.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Here, Johnson argues the subject property's March 2010 sales price is determinative of its fair market value. Section 441.21(1)(b) states, however, that sale prices of property in abnormal

transactions not reflecting market value must not be taken into account, or must be adjusted to eliminate the effect of factors which distort market value, including . . . *foreclosure* or other forced sales.

The evidence demonstrates the March 2010 sale of the subject property was the result of a foreclosure and therefore the sale is abnormal. Johnson made no adjustments, however, to account for the distorting effect of the sales transaction. Additionally, the comparable properties Johnson submitted consisted entirely of other foreclosure sales or unadjusted sales and listings. Johnson failed to provide evidence of the subject property's correct fair market value as of January 1, 2011, and has not proven his property is over-assessed.

THE APPEAL BOARD ORDERS the assessment of All Star Financial, LLC's property located at 506 Pleasant View Drive, Des Moines, Iowa, set by the Polk County Board of Review, is affirmed.

Dated this 31st day of May, 2013.

Stewart Iverson
Stewart Iverson, Presiding Officer

Jacqueline Rypma
Jacqueline Rypma, Board Member

Karen Oberman
Karen Oberman, Board Member

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| Certificate of Service | |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>May 31, 2013</u> . | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other |
| Signature | <u>Jean Cooper</u> |